



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1093

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27170 and RQ-727.

You inform us that Travis County received a request for records of the case of Mark Kazanoff. The request is from an attorney on behalf of his client who is the mother of the victim in the case. You assert that the requested records are excepted from required public disclosure based on sections 552.101, 552.103, and 552.111 of the Government Code. You submitted the requested information to this office for review.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. Subsection (a) of section 262.201 reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and

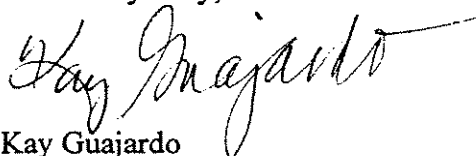
(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

The requested information consists of "reports, records, communications, and working papers used or developed" in investigations made under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information. Consequently, the information in the requested file may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by the agency that investigated the allegation, with one exception, which we will explain.

The file contains medical records that are covered by the Medical Practice Act, V.T.C.S. article 4495b. *See* V.T.C.S. art. 4495b, § 5.08(b) (making confidential "records of identity, diagnosis, evaluation, or treatment of patient by physician"). We observe that it is possible that the Medical Practice Act may authorize the release of medical records that are made confidential by section 262.201 of the Family Code. When two statutes conflict and cannot be harmonized, the more specific statute prevails as an exception over the general provision, whether it was passed before or after the general statute. *See Font v. Carr*, 867 S.W.2d 873, 881 (Tex. App.--Houston [1st Dist.] 1993, *writ diss'd w.o.j.*) We believe that since the Family Code provision is more general than the Medical Practice access provisions, the Medical Practice Act provision prevails as an exception over the Family Code provision. The Family Code provision applies to "the files, reports, records, communications, and working papers used or developed" in a Family Code chapter 261 investigation of child abuse or neglect. Section 5.08 of the Medical Practice Act, in contrast, applies only to a narrow class of information generated within the strict confines of a specific professional relationship. Contained within that Family Code section is a detailed set of requirements for the release of medical information. We therefore believe that the Medical Practice Act access provisions prevail over Family Code section 262.201 to the extent of conflict and that records subject to release under the Medical Practice Act access provisions may not be withheld from disclosure under section 261.201 of the Family Code. Therefore, the medical records may be released only in accordance with the Medical Practice Act. *See id* § 5.08(c), (h)(5), (j), (k).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

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Ref.: ID# 27170, 27240, RQ-727

Enclosures: Submitted documents

cc: Mr. Paul Enos
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(w/o enclosures)